

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELANIE HUFNAGLE and
ALYSSA HOLLISTER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

KEITH A HUFNAGLE,

Respondent-Appellant.

UNPUBLISHED

June 29, 2006

No. 267834

Ingham Circuit Court

Family Division

LC No. 00-038023-NA

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Respondent Keith Hufnagle appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Respondent Hufnagle is the legal father of Melanie Hufnagle and Alyssa Hollister, and the putative father of Gavin Hufnagle. After several incidents of domestic violence, respondent and the children's mother, Angel Hollister, signed a service agreement which required them to maintain stable housing that was free of domestic violence and substance abuse. Within three months, Hollister had tested positive for marijuana, the domestic violence had resumed and the couple was evicted from their home, taking up residence in a motel. The three children were removed from their care and an adjudication hearing followed. Immediately after the hearing, respondent was taken into custody for violating his probation and was incarcerated for 90 days.

In jail, respondent completed a parenting course and six hours of anger management; however, within two months, his relationship with Hollister deteriorated, resulting in a restraining order against him which he violated by assaulting Hollister and her mother in the mother's home after kicking in the door. Respondent was consequently sentenced to two and a

half years in prison, where he was located for the duration of these proceedings¹. Parentless, the children were moved around various foster homes over a period of 29 months and are now all placed in separate homes. While incarcerated, respondent completed 24 hours of anger management counseling, obtained his GED and did not receive any infractions. Respondent maintained contact with the children through cards and letters.

The trial court found that Gavin had no legal father, and terminated respondent's parental rights to Melanie and Alyssa pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). Hollister voluntarily released her parental rights to all three children and is not a party to this appeal.

II. STATUTORY GROUNDS FOR TERMINATION

A. Standard of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). The trial court's decision is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A finding of fact is clearly erroneous if a reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

The trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j). We agree that the trial court properly terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). Since only one statutory grounds needs to be found, we will not address the merits of subsection 3(j). Subsections (c)(i) and (g) provide, in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds...

¹ The children were briefly returned to Hollister's care after she partially complied with services but they were removed from her care two months later when she left then with an unapproved caretaker and ran her car into directional signs and a light pole while driving drunk.

(i) The conditions that led to adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age. [MCL 712A.19b(3)(c)(i), (g).]

Respondent argues that he will be able to rectify the conditions that led to adjudication and be able to provide proper care or custody for the children within a reasonable time following his release from prison. We disagree. Respondent was incarcerated twice during this 33-month proceeding and would remain incarcerated a minimum of six months after the termination hearing. Respondent and Angel Hollister had signed a service agreement in May 2003 by which respondent was required to rectify his difficulty managing his anger, to provide a safe home for the children, and to refrain from criminal activity, but respondent failed to meet any of these requirements. Within three months, Hollister had tested positive for marijuana, the couple was evicted from their residence and had two incidents of domestic violence. Additionally, respondent was unable to effectively comply with services ordered because he was jailed for 90 days for violating probation in another county. In jail, he obtained six hours of anger management counseling, but did not rectify the conditions of unstable housing, criminal activity, or domestic violence. Instead, only two months after being released, he was re-incarcerated for another two and a half years for breaking down the door and entering Hollister's mother's house when he was refused admittance.

During the next two years in prison, respondent participated in services available to him including 24 hours of anger management counseling. Defendant argues on appeal that his release is imminent and he should be allowed additional time to become an appropriate parent. The time in which respondent should have shown progress was during the first nine months of the proceeding. Instead, his own criminal actions and inability to control his anger resulted in re-imprisonment and a delay for two additional years to demonstrate his capacity to provide proper care for his children. Respondent's criminal history spanned 20 years, out of which he had been incarcerated for a total of seven years. His propensity for domestic violence and criminality was deep-seated and would require extensive counseling; frequent incarceration had not prevented recidivism. The trial court did not err in finding that respondent was still incapable of providing proper care and that this would not be rectified within a reasonable time. Thus, the court did not clearly err in terminating respondent's rights.

III. BEST INTERESTS OF THE CHILD

A. Standard of Review

Once a statutory ground for termination has been established by clear and convincing evidence, the trial court shall order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich App 346, 352-354; 612 NW2d 407 (2000). Decisions

terminating parental rights are reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if a reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK, supra* at 209-210. In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller, supra* at 337.

B. Analysis

The trial court did not clearly err in finding that termination of respondent's parental rights was not contrary to the children's best interests in accordance with MCL 712A.19b(5). While the children were bonded to respondent and maintained contact through correspondence with him through letters and cards, he had been in prison for over two years while they remained in foster care. Respondent argues that it is in their best interests to remain with him as he could provide the opportunity for all three children to be raised together instead of in separate foster homes. However, severing the family bond and the difficulty of being raised separately does not outweigh the fact that respondent was not able to provide the children with a safe, appropriate home with proper parenting within a reasonable time. Thus, the trial court did not clearly err in terminating respondent's parental rights as it was not contrary to the children's best interests.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette